

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SALES TAX REFERENCE No 5 of 1997

For Approval and Signature:

Hon'ble MR.JUSTICE R.BALIA. and
MR.JUSTICE A.R.DAVE

- =====
1. Whether Reporters of Local Papers may be allowed to see the judgements?
 2. To be referred to the Reporter or not?
 3. Whether Their Lordships wish to see the fair copy of the judgement?
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge?

1 to 5: No

M/S.CUTFAST GRAINS PVT. LTD.

Versus

THE STATE OF GUJARAT

Appearance:

MR NAYAN SHETH for MR RD PATHAK for Petitioner

MR KSMSL MRHTA with MR HV CHHATRAPATI for Respondent No. 1

CORAM : MR.JUSTICE R.BALIA. and

MR.JUSTICE A.R.DAVE

Date of decision: 23/11/98

ORAL JUDGEMENT (per R. Balia, J.)

At the instance of the assessee, the Gujarat Sales Tribunal has referred the following question of law arising out of its order dated 5.9.1992 for the decision of this court.

"Whether, on the facts and in the circumstances of the case, the sales against the certificate in Form "NN" prescribed under entry 94 of the Notification prior to the receipt of the exemption certificate would be liable to be discarded and the tax applicable thereto would be required to be taken into consideration for the computation of the aggregation of the tax exemption limit under entry 118 of the Notification under section 49(2) of the Gujarat Sales Tax Act, 1969?"

2. The applicant is a private limited company carrying on business of manufacture of aluminium oxide grains from bauxite and coal. The applicant had set up its industry in a backward area and was granted an eligibility certificate as well as exemption certificate as required under provisions of entry 118 of the Notification issued under sec. 49(2) of the Gujarat Sales Tax Act. In terms of these certificates the applicant was entitled to sales tax exemption for the period between 15.12.81 (the date of commencement of commercial production by the assessee) to 14.12.88. The eligible limit of tax exemption was of Rs. 19,88,661/-. The applicant is a dealer registered under the Gujarat Sales Tax Act as well as Central Sales Tax Act. During the assessment period 1.10.84 to 30.9.85, the assessee made sales against declaration in Form "NN" to the tune of Rs. 3,50,816/- as a result of which under the provisions of entry 94 of the Notification under sec. 49(2) of the Act, the applicant was not liable to pay tax to the tune of Rs. 20,814/-.

3. The Sales Tax Officer accepted the claim of the assessee that as he was not liable to pay tax in respect of sales made against Form "NN", while computing tax leviable on him, the same cannot be held to be taxable for purpose of aggregating the amount to be adjusted against the eligible exemption limit. That order was upset by the Assistant Commissioner of Sales Tax in exercise of his revisional jurisdiction and the order of Assistant Commissioner of Sales Tax has been affirmed by the Tribunal in a group of cases dated 5.9.1992.

4. The issue raised in this case is similar to one which is raised in M/s. Ardeec Engineering (Saurashtra) P. Ltd. vs. The State of Gujarat, Sales Tax Reference No. 4/97, which has been decided on 21-23/11/98 upholding the claim of the assessee. Following the aforesaid decision, we answer the question referred to

above in negative, that is to say, in favour of the assessee and against the Revenue. There shall be no order as to costs.

(hn)